

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>LA VERNE SWIFT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 3:12-cv-01140</b>
<b>v.</b>	)	
	)	<b>Judge Sharp</b>
<b>THE CHRISTIAN BROADCASTING,</b>	)	<b>Magistrate Judge Brown</b>
<b>NETWORK, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, concluding,

. . . 1) that Plaintiff failed to raise her claims of discrimination based upon her color, sex, religion, and national origin with the EEOC and attain a right-to-sue letter; 2) that Plaintiff has failed to “point to evidence that, taken in a light most favorable to her, could lead a reasonable jury to” find that she was both qualified for the position from which she was terminated and that she was subject to a different standard of employment than non-protected class members; and 3) that Plaintiff has failed to establish a *prima facie* case of discrimination under the Act.<sup>1</sup>

(Docket Entry No. 92 at 13). Therefore, the Magistrate Judge recommended,

[Defendant]’s motion to dismiss Plaintiff’s claims for discrimination based upon color, sex, religion, and national origin be **GRANTED**; [Defendant]’s motion for Summary Judgment be **GRANTED**; Plaintiff’s claims be **DISMISSED** with prejudice, and all other outstanding motions pending be **TERMINATED** as **Moot**.

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<sup>1</sup> In addition to Defendant’s motion, Plaintiff likewise filed a motion for summary judgment. The Magistrate Judge stated the following as it relates to that motion, “Plaintiff filed a motion for summary judgment that was nearly six weeks beyond the deadline for dispositive motions. (DE 49) Further, this motion is essentially a restatement of Plaintiff’s response to CBN’s motion rather than a true motion for judgment as a matter of law on Plaintiff’s claims. As such, the Magistrate Judge has relied on it as additional support for Plaintiff’s motion in opposition to summary judgment.” (Docket Entry No. 92 at 1).

(*Id.*). A response in opposition was filed to the R & R.<sup>2</sup> (Docket Entry No. 96). Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R of the Magistrate Judge.

Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 92) is hereby ACCEPTED and APPROVED;

(2) Defendant's *Motion for Summary Judgment* (Docket Entry No. 31) is hereby GRANTED;

(3) All other pending motions are hereby TERMINATED as moot; and

(4) This case is hereby DISMISSED WITH PREJUDICE.

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

**It is SO ORDERED.**



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KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Plaintiff reasserts arguments previously made in opposition to the motion for summary judgment and has submitted new evidence as a basis for her objection to the R & R. As a general rule, district courts do not have to consider arguments on review that were not raised before the magistrate judge. *See Murr v. United States*, 200 F.3d 895, 902 (6th Cir. 2000) (“The magistrate [ ] never had the opportunity to consider this issue. Courts have held that while the Magistrate Judge Act, permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate. Hence, Petitioner's failure to raise this claim before the magistrate constitutes waiver.”). Consequently, the Court declines to address Plaintiff's new evidence that the Magistrate Judge did not have the opportunity to consider.